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## BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission  
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SEP 7 1999

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC'S  
COMPLIANCE WITH §271 OF THE  
TELECOMMUNICATIONS ACT OF  
1996

) Docket No. T-0000B-97-0238  
)  
)  
) SPRINT COMMUNICATIONS  
) COMPANY L.P.'S PRELIMINARY  
) STATEMENT IN RESPONSE TO U S  
) WEST COMMUNICATIONS, INC.'S 271  
) FILING AND RESPONSE TO  
) PROPOSED BIFURCATION

Sprint Communications Company L.P. ("Sprint"), in accordance with the Procedural Order issued by the Commission on July 22, 1999, hereby submits its Preliminary Statement in the Matter of U S WEST Communications, Inc.'s Compliance with the competitive checklist of Section 271 of the Telecommunications Act of 1996 (the "Act") filing. Also, in accordance with the Procedural Order issued by the Hearing Officers on August 27, 1999, Sprint hereby submits its responses to the questions posed by the Hearing Officers on the matter of bifurcation of the proceeding to address issues related to Operations Support Systems ("OSS") at a later date and related scheduling issues.

In its Preliminary Statement, Sprint sets forth its fundamental position on U S WEST's Section 271 filing without delving into the detail of testimony or evidence to be presented. Sprint will briefly address each of the 14 items identified in the Section 271

checklist and will also address the Section 271 requirement that the filing be in the public interest. Finally, Sprint will address U S WEST's contention that it complies with Section 272, which sets forth the requirement that U S WEST set up a separate affiliate to provide interLATA service once 271 authority is obtained.

**I. PRELIMINARY STATEMENT OF POSITION**

**U S WEST FAILS TO MEET THE COMPETITIVE REQUIREMENTS  
OF SECTION 271's 14 POINT CHECKLIST**

U S WEST fails to meet the requirements of the 14 point competitive checklist set forth in Section 271 of the Act. Sprint will not address every checklist item, but will only address those checklist items with which it has first-hand experience. Sprint neither opposes nor supports U S WEST's claims with respect to those checklist items that it does not address herein.

Sprint contemplates that state and federal regulatory rulings, the Commission's OSS workshop, and ongoing discovery will lead to the development of new factual and legal arguments prior to the hearing in this matter. Should U S WEST supplement its Application or its testimony between this day and the date of the hearing, Sprint reserves the right to supplement or modify its positions in response.

**A. Interconnection (Checklist Item i)**

Under §271(c)(2)(B)(i) U S WEST must provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent local exchange carriers ("ILEC") network. This interconnection must be at any technically feasible point within the ILEC's network and must be at least equal in quality to that provided by the ILEC to itself. (§251(c)(2)).

U S WEST fails to provide interconnection to Sprint at parity with that which it supplies itself. U S WEST refuses to supply Sprint with network information to facilitate Sprint's ordering of interconnection trunks. In other words, Sprint is unable to obtain information from U S WEST that would allow Sprint to understand U S WEST's network topology, without which information, Sprint cannot identify what interconnection trunks are available to it.

U S WEST's inability to supply network information makes the purchase of interconnection trunks difficult, if not impossible.

U S WEST claims to offer interconnection through entrance facilities. While Sprint can not state that this is universally untrue, it has been an ongoing ordeal for Sprint to order entrance facilities. Sprint has received no cooperation from U S WEST in determining what entrance facilities U S WEST is offering. U S WEST seems to be playing semantic games when it claims to offer interconnection through entrance facilities.

The fact that U S WEST claims to have interconnected its network with a number of CLEC networks does not mitigate the fact that it is impossible to compete with U S WEST on an equal footing when U S WEST denies Sprint information that is available to itself.

**B. Access to Unbundled Network Elements ("UNEs") (Checklist Item ii)**

Sprint cannot comment on U S WEST's claim that it has satisfied §271(c)(2)(B)(ii) of the Act. Sprint has not attempted to order UNEs from U S WEST in Arizona at this time. Sprint is concerned about attempting to order UNEs from U S WEST because of U S WEST's stated position that it is not legally obligated to offer

UNEs. U S WEST has argued in its interconnection negotiations with Sprint that, until the FCC rules on which network elements the RBOCs must unbundle, the Sprint/U S WEST interconnection agreement section on UNEs is not legally binding. Sprint cannot compete on a UNE basis under these circumstances.

Sprint expressly reserves the right to offer factual and legal arguments in opposition to U S WEST's claim that it offers nondiscriminatory access to its operations support system (OSS). Sprint intends to be an active participant in the Commission's OSS workshop and will continue its individual, ongoing dialogue with U S WEST to facilitate the development of an acceptable OSS. Sprint contemplates that it will learn sufficient information during the coming months to provide the Commission with reliable, expert testimony and legal analysis regarding this subject.

**C. Poles, Ducts and Conduits (Checklist Item iii)**

Sprint cannot comment on U S WEST's claim that it satisfies §271(c)(2)(B)(iii) of the Act. Sprint has not yet attempted to access U S WEST's poles, ducts or conduits in Arizona.

**D. Unbundled Loops (Checklist Item iv)**

Sprint cannot comment on U S WEST's claim that it satisfies §271(c)(2)(B)(iv) of the Act. Sprint has not yet attempted to obtain access to U S WEST's unbundled loops in Arizona.

**E. Unbundled Local Transport (Checklist Item v)**

U S WEST claims it offers shared transport. It is not clear to Sprint that U S WEST offers shared transport as required under the Act. Sprint has been engaged in extensive interconnection contract negotiations with U S WEST over the past three

months, and believes that U S WEST's claim that it offers shared transport is not what it appears. U S WEST seems to be playing word-games with the term "shared transport", offering a product quite different than that which the Act and the FCC intend.

**F. Unbundled Local Switching (Checklist Item vi)**

Sprint cannot comment on U S WEST's claim that it satisfies §271(c)(2)(B)(vi) of the Act. Sprint has not yet attempted to obtain access to U S WEST's unbundled local switching in Arizona.

**G. 911/E911; Directory Assistance; and Operator Services (Checklist Item vii)**

U S WEST has failed to satisfy §271(c)(2)(B)(vii) of the Act by making the ordering process for 911 and E911 confusing and unmanageable. U S WEST has been unable to create and maintain an ordering process that Sprint can utilize with any degree of reliability. The process has been undermined by the fact that U S WEST has reinvented the forms required for ordering 911 and E911, after Sprint had already begun the ordering process; by the requirement that Sprint insert on that form a new CIC code that does not yet exist; and by the inconsistent work of U S WEST employees.

U S WEST has claimed that the ordering of 911 and E911 is a learning process for all involved, and this is true to some extent. However, the process that U S WEST currently has in place is unworkable -- especially for a competitor who relies heavily on the competency of the RBOC in order to provision 911 and E911.

U S WEST cannot expect to meet this §271 checklist item requirement, while at the same time offering a litany of excuses for its imperfect ordering process. Excuses, by definition, do not meet the Act's 271 checklist requirements.

**H. White Pages Directory Listings (Checklist Item viii)**

Sprint cannot comment on U S WEST's claim that it satisfies §271(c)(2)(B)(viii) of the Act. Sprint has not yet attempted to obtain access to U S WEST's White Pages in Arizona.

**I. Telephone Numbers (Checklist Item ix)**

Sprint cannot comment on U S WEST's claim that it satisfies §271(c)(2)(B)(ix) of the Act. Sprint has not yet attempted to obtain access to telephone numbers in Arizona.

**J. Databases and Signaling (Checklist Item x)**

Sprint cannot comment on U S WEST's claim that it satisfies §271(c)(2)(B)(x) of the Act. Sprint has not yet attempted to obtain access to U S WEST's databases and signaling in Arizona.

**K. Number Portability (Checklist Item xi)**

Sprint cannot comment on U S WEST's claim that it satisfies §271(c)(2)(B)(xi) of the Act. Sprint has no experience with U S WEST's implementation of number portability in Arizona.

**L. Local Dialing Parity (Checklist Item xii)**

Sprint cannot comment on U S WEST's claim that it satisfies §271(c)(2)(B)(xii) of the Act. Sprint has no experience with U S WEST's local dialing parity in Arizona.

**M. Reciprocal Compensation (Checklist Item xiii)**

In its Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket 99-68, released 2/26/99, paragraph 26, the Commission found:

“Although reciprocal compensation is mandated under section 251(b)(5) only for the transport and termination of local traffic, neither the statute nor our rules prohibit a state commission from concluding in an arbitration that reciprocal compensation is appropriate in certain instances not addressed by Section 251(b)(5), so long as there is no conflict with governing federal law. A state commission’s decision to impose reciprocal compensation obligations in an arbitration proceeding – or a subsequent state commission decision that those obligations encompass ISP-bound traffic – does not conflict with any Commission rule regarding ISP-bound traffic.” (Footnotes omitted.)

It is possible that this Commission will soon take up the issue of reciprocal compensation for ISP-bound traffic in a Sprint/U S WEST arbitration proceeding. Based on the FCC’s requirement that arbitrations be concluded within 9 months from the date on which a request for negotiations is served, it is possible that the Sprint/U S WEST arbitration will precede the hearing on U S WEST’s 271 application. Should this Commission rule during that arbitration proceeding that ISP-bound traffic is subject to reciprocal compensation, U S WEST’s current position would be contrary to the Commission’s rules, and, unless modified, would fail to meet the requirements of checklist item xiii.

Sprint reserves the right to comment on this issue through a supplemental pleading should such future Commission rulings as are described above occur.

**N. Resale (Checklist Item xiv)**

U S WEST has failed to satisfy §271(c)(2)(B)(xiv) of the Act. U S WEST is required to make available “telecommunications services for resale in accordance with the requirements of §251(c)(4) and §252(d)(3).” Section 251(c)(4) requires incumbent

LECs “to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers,” and “not to prohibit and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service.”

U S WEST has placed the roadblock to providing resold services at the ordering stage of the process. U S WEST has intentionally limited Sprint’s knowledge of the products that are available for resale. For example, U S WEST refuses to provide Sprint with a complete list of retail products and their matching USOC codes. This is a problem for Sprint, because, to order a resold service, U S WEST requires that the CLEC identify the requested service by its USOC code. Thus, Sprint is unable to determine which product it is ordering. In essence, U S WEST is playing a shell game during the resale ordering process.

Offering a product for resale and facilitating the ordering of products for resale are two very different, though equally important, elements of resale as a competitive service. Without the ability to order the products U S WEST offers for resale, U S WEST’s claim that it makes resale available is vacant. U S WEST is imposing unreasonable and discriminatory conditions, in violation of §251(c)(4) of the Act, on the resale of its telecommunications services. For that reason, U S WEST has failed to meet the requirements of checklist item (xiv).

**IT WOULD BE CONTRARY TO THE PUBLIC INTEREST TO ALLOW U S WEST TO OFFER LONG DISTANCE SERVICE IN THE STATE OF ARIZONA**

Under Section 271(d)(3)(C) of the Act, the FCC must consider whether approving an RBOC’s 271 application is consistent with the “public interest, convenience, and necessity.” US WEST claims its entry into long distance is in the public interest; however,



US WEST's assertion is based on the invalid assumption that the long distance market is not competitive. By any reasonable measure, long distance is competitive, viewed both in terms of declining prices and constantly improving product enhancements.

US WEST claims that its entry into long distance will yield a large reduction in toll prices. In fact, based on US WEST's intraLATA pricing performance, consumer long distance prices could increase in Arizona with US WEST entry.

There is also great concern that US WEST could leverage its dominant control over switched access minutes within its franchised territory to force its long distance competitors out of the market through a price squeeze.

If Section 271 authorization is granted before US WEST is committed to cooperating to open the local telephone market in Arizona, the strong incentives for US WEST cooperation created by the Section 271 process will be lost, and the emergence of local competition will be undermined. This situation would be difficult to rectify. Once US WEST is allowed into the long distance market, revocation of a grant of in-region long distance authority would be virtually impossible. If local competition fails to develop, US WEST will maintain its monopoly position in switched access and be able to leverage that advantage in its in-region long distance market.

Conversely, if Section 271 approval is deferred until local competition develops and we are certain US WEST can not engage in a price squeeze based on its monopoly position in the provisioning of switched access, such approval can then be granted quickly. Thus, uncertainty favors withholding Section 271 approval until local market (and access) competition on a commercial scale has been clearly demonstrated to be irreversibly open.

## **U S WEST FAILS TO MEET THE REQUIREMENTS OF §272'S AFFILIATE RULES**

Section 272 of the Act requires that a RBOC such as U S WEST Communications, Inc., provide long distance service through an affiliate. U S WEST's affiliate company, U S WEST Long Distance, Inc., has been created to provide long distance service. Presently, U S WEST, Inc. (the corporate parent company) has indicated that it plans to merge its operations with those of long distance carrier Qwest Communications, Inc. (Qwest) Qwest provides interLATA long distance service in Arizona today. Under the proposed merger between Qwest and U S WEST, Inc., Qwest will provide interLATA long distance service as a part of the merged entity. On its face, this relationship raises questions regarding compliance with Section 272 of the Act. Potential affiliate rules violations and issues will be further explored in Sprint's future pleading and testimony.

## **CONCLUSION OF PRELIMINARY STATEMENT**

For the foregoing reasons, Sprint Communications Company L.P. strongly objects to U S WEST's §271 application in the State of Arizona. U S WEST has failed to comply with the requirements of the §271 checklist, thereby making it impossible for local market competition to take root in the State of Arizona. Unless and until U S WEST opens its local market to competition, its §271 applications should be denied.

## **II. RESPONSE TO HEARING OFFICERS' QUESTIONS CONCERNING THE BIFURCATION OF THE PROCEEDING AND RELATED SCHEDULING MATTERS**

U S WEST and Staff jointly proposed to bifurcate OSS and non-OSS issues at the August 27, 1999 hearing and also proposed a procedural schedule for addressing the non-OSS issues. In response to this proposal, the Hearing Officers requested that

intervenors address the proposal in their preliminary statements due September 7, 1999. In a Procedural Order issued August 27, 1999 the intervenors were directed to respond to the following questions: 1) should non-OSS issues be bifurcated from OSS issues and proceed on a separate track? 2) if non-OSS issues are bifurcated, (a) what issues should be included in the non-OSS proceeding? (b) what would be a reasonable schedule for the non-OSS proceeding?

**A. The Proceeding Should Not Be Bifurcated.**

In support of its bifurcation proposal, U S WEST suggests that other state commissions have bifurcated OSS and non-OSS issues at the beginning of the proceeding. To Sprint's knowledge, this is not the case. Rather, state commissions, after determining that an RBOC was not in compliance with certain checklist items have allowed an RBOC to provide additional evidence in subsequent phases of the 271 proceedings in order to allow an RBOC to demonstrate progress toward compliance or actual compliance with the previously non-compliant checklist items. In these cases, bifurcation was not planned at the beginning of the process but rather occurred on a *de facto* basis after the RBOC failed to demonstrate checklist compliance.

No benefit to the public resulting from bifurcation is demonstrated by U S WEST. In fact, U S WEST is the only beneficiary of its bifurcation proposal. Holding hearings prior to the completion of OSS testing may not lead to a complete and final record due to the passage of time. The Nebraska Commission, for example, has reopened the record in U S WEST's 271 compliance filing to reconsider the local number portability issue after receiving complaints against U S WEST. Similarly, Sprint has asked the California Commission to reconsider its previous finding of dialing parity compliance by

Pacific Bell based on its experience and new evidence. Thus a stale hearing record can lead to duplication of efforts and wasted resources. The issue of duplication of efforts and wasted resources also argues against bifurcation in other ways that adversely impact all parties to the proceeding: double testimony by some witness, redundant witness preparation and hearing preparation, and expenses related to travel and the value of the time of witnesses who are removed from their ongoing job responsibilities twice instead of once for what should be a single proceeding.

The burden is on U S WEST to demonstrate that its proposed bifurcation is efficient and that the benefits of bifurcation outweigh the addition costs to the Commission and the other parties. U S WEST has not made this showing.

**B. Non-OSS Issues In A Bifurcated Proceeding.**

The Hearing Officers have also asked the parties to comment on which issues should be included in the non-OSS portion of the proceeding if the proposal for bifurcation is granted. Should the Hearing Officers approve the bifurcation proposal, only the following non-OSS issues should be addressed in the first round of hearings: checklist item iii (poles, duct, and conduits); checklist item vii (911, directory assistance and operator services); checklist item viii (white pages); checklist item ix (number administration); checklist item x (databases and signaling); checklist item xii (dialing parity); and checklist item xiii (reciprocal compensation). Sprint believes that all other checklist items are so closely related to the issue of nondiscriminatory access to OSS that they should be considered in their entirety as part of the second round of hearings to consider OSS-related issues. Sprint also believes that issues related to Section 272

and the public interest should be addressed in the second phase, if bifurcation is ordered.

**C. Proposed Schedule If Bifurcation Is Approved.**

Sprint recommends that the intervenors and Staff be allowed 30-40 days to file rebuttal testimony after final U S WEST amendments to its compliance filing, including updates to its SGAT. U S WEST should then be provided the same amount of time to file surrebutal testimony. After hearings on non-OSS issues are complete, the parties should be given 30 days from the receipt of transcripts to file post-hearing briefs on non-OSS issues if the Hearing Officers intend to issue a proposed order on non-OSS issues. If no such non-OSS proposed order is planned, then the parties should brief both non-OSS and OSS-related issues in a single brief after all hearings are completed due 30 days after receipt of all transcripts.

Dated this 3<sup>rd</sup> day of September 1999.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.



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**Certificate of Service**

The undersigned hereby certifies that a copy of the foregoing was served by sending a copy thereof to the attached service list on this 3<sup>rd</sup> day of September 1999.

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